STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Small Claims
Dkt No. 99-6-20 Ossc

VERA WEBSTER,
Plaintiff
v.

JOHN CAMPBELL and
EVELYN CAMPBELL,
Defendants

DECISION

This matter came before the Small Claims Court for hearing on October 14, 2021 by Webex. Plaintiff Vera Webster was present and represented herself. Defendants John and Evelyn Campbell were present and represented themselves.

Facts

Plaintiff is the owner of 7 units in an 8-unit condominium building known as Bear Mountain Condominiums. Defendants own the 8th unit. It appears that neither Plaintiff nor Defendants reside in their units full-time.

Prior to 2013, there were at least 4 owners of the 8 condominium units. Association dues were $100 per month per unit, which were paid to the Association and deposited in its bank account. If extra funds were needed for special projects, an estimate was obtained, and based on the estimate, a special assessment was determined and each owner deposited its share of the special assessment into the Association bank account, which then paid the bill. For example, in 2012, this special assessment process was used to fund a roof replacement. Meetings were held annually and owners agreed on what needed to be done and paid for in the coming year.

In 2013, Plaintiff became owner of 7 units, whereas Defendants were owners of 1 unit. Plaintiff was elected President of the Association, and Defendant Mr. Campbell was elected Secretary/Treasurer. At that time, the building was in poor condition and needed significant repairs.

Plaintiff claims that in 2013, she and Defendants agreed that because significant repairs and improvements were needed, and she had the money to pay for them, she would be responsible for the project of repairs and improvements, and at the end of the project, they would determine how much each was responsible for based on their percentage ownership of units (1/8, 7/8). Defendants dispute that such an agreement was ever reached.

Plaintiff seeks what she represents is the unpaid portion of Defendant's 1/8 share of the total improvement expenses for which she paid from 2013 through 2019. The amount she claims Defendants owe her individually (not to the Association) is $5,316.00, although she acknowledges that the maximum available in Small Claims court is $5,000.00.

Defendants acknowledge that Plaintiff did an excellent job of upgrading a seriously deteriorated building and creating a building that is currently in excellent condition and beautiful. There are no disputes about the work that was done or the cost. The issue between them is allocation/adjustment of expenses. Defendants claim that they have paid their share of the improvement expenses by payments they made in the amounts she requested during the 2013-2019 period.

Neither party offered the Bylaws of the Condominium Association as evidence, so the court is without information as to the obligations of the parties pursuant to the Condominium Association Bylaws. The Association is not a party to this case. Ms. Webster's claim rests on her allegation of a private agreement outside the condominium structure. There is no written documentation of the agreement Ms. Webster says was made. There are also no documents such as letters or emails during the 7 year period that reflect an unwritten agreement with those terms.

The credible evidence shows that from 2013 through 2019, throughout the period of the improvements, neither of the two systems—special assessments (presumably based on the ByLaws) or the arrangement Ms. Webster claims had been agreed upon—were used for the expenses of the improvements and repairs. The evidence also shows that the routine for regular dues was not followed by Ms. Webster.

Association Dues

The parties agree that Association dues are $100 per unit per month. There is an Association bank account for management of dues, payment of expenses, and special assessments. It is managed by Mr. Campbell as Treasurer. The Campbells, in their capacity as unit owner, set up automatic transfer of their monthly dues from their personal bank account to the Association bank account, and this was in effect throughout the 7 year period of improvements. Thus they contributed $1,200 annually to the Association account.

Ms. Webster did not deposit dues payments into the account. Rather, she paid various expenses on behalf of the Association that otherwise would have been paid by the Association as well as additional expenses for the improvements she was making. She was thus contributing the equivalent of her dues obligation ($100 x 12 x 7 units = $8,400) by paying expenses that otherwise would have been paid out of the Association account. She submitted receipts of what she paid for to Mr. Campbell as Treasurer on an ongoing basis, but these apparently included both regular expenses and improvement expenses. The evidence does not show that there was a designation of each bill as either a 'dues equivalent' bill or a bill for improvements.

Because there was little cash in the account, since Ms. Webster was not making dues payments into it, there were times when bills for routine maintenance, such as snowplowing or lawn maintenance, exceeded available cash. In those instances, she asked Mr. Campbell to pay

the bill, and he did so out of personal funds. She now says that she intended such bills to be paid from the Association account, but she was not specific about that at the time, and there would not have been enough cash in the account to pay all such bills. Moreover, not all bills were for routine maintenance expenses. Mr. Campbell paid such bills from personal funds. Such payments were over and above the Campbell monthly dues payments that were automatically deposited into the Association account. Mr. Campbell now calls those extra personal payments special assessments, but the evidence does not show that at the time they were designated or treated as special assessments (within the meaning of that term in most condominium bylaws and as previously observed by the parties), or understood by both parties to be such. It appears that the parties were operating without any clear plan for paying for or accounting for the difference between routine maintenance expenses and improvement expenses.

Mr. Campbell provided Ms. Webster with a receipt annually that confirmed that she had paid bills in at least the amount of her obligation for Association dues (total of $8,400) so that she could use it for income tax purposes, but no accounting was kept to differentiate between 'dues equivalent' maintenance expenses and improvement expenses that she paid for on behalf of the Association.

Improvement expenses

The evidence shows that the expenses for improvements during the 2013-2019 period were not handled in a regular and consistent way. While Ms. Webster sent copies of all bills she paid to Mr. Campbell, there was no accounting or documentation done on an ongoing or yearly basis that reflected either system (special assessments vs. Ms. Webster's alleged agreement), or that separated regular maintenance items from special improvement expenses.

There were no annual meetings after 2013. Ms. Webster testified that she believed that since she held majority ownership of the condominium units, she was entitled to make the decisions.

Sometimes there was a sharing of specific project expenses, and sometimes there was not. In 2014, there was a special assessment of $9,898.56 for which each party contributed their proportionate share of 1/8 or $1,237.32 per unit. Sometimes Ms. Webster asked for bills for items above ordinary maintenance directed to her to be paid by Mr. Campbell, and sometimes she paid them herself. In 2014, the same year as the special assessment, the Campbells paid from personal funds the bill for $1,626 to replace a water tank that Ms. Webster asked Mr. Campbell to pay. It is not reasonable for Ms. Webster to have expected that amount to be available in the Association account, since she was paying nothing into it. The Campbells were depositing $1,200 per year but the account needed to pay common expenses for all 8 units, and normally would have received cash dues of $9,600 per year.

In 2018, the parties agreed in a telephone conversation to have vinyl siding done. Mr. Campbell's testimony was that the total advance estimate was for $18,000. Under their pre-2013 special assessment pattern, each would have deposited their proportionate share (based on number of units) into the Association account. That did not happen. Instead, the Campbells agreed to pay $6,500 or approximately one-third of the cost (rather than 1/8). The Campbells

paid that amount to Ms. Webster. When she received the final bill, she wanted them to pay more for a total contribution of $10,000, or half the actual cost. When they refused, she was angry. The dispute was resolved by no additional payment by the Campbells, but they agreed to allow Ms. Webster to use their condo unit for some period of time, which she did. Clearly the parties had not used whatever procedures the ByLaws specify for payment for improvements, nor was the vinyl siding handled in the manner their prior special assessments were handled, nor were they operating under the agreement that Ms. Webster now claims they had.

The evidence is clear that once Ms. Webster became owner of a majority of units, whatever procedures the ByLaws call for to be used for special assessments to pay for improvements (above ordinary maintenance expenses paid by dues from the Association account) were not used. There is a dispute about whether or not the parties agreed in the alternative to the terms Ms. Webster now claims, but there is insufficient evidence of such an agreement and the actions of the parties over the years 2013-2019 are not consistent with such an agreement. Rather, they show that the parties were operating without observing the ByLaws and without a clear alternative agreement.

Conclusions of Law

Ms. Webster, as the plaintiff, has the burden of proof. This means that she must prove that the parties made the agreement she seeks to enforce, which is a private agreement between individuals outside the structure of the Bear Mountain Condominium Association. Meeting the burden of proof requires evidentiary proof by a preponderance of the evidence, meaning 'more likely than not.'

The evidence shows that Ms. Webster has not met the burden of proof. Her evidence does not prove that in 2013 the parties mutually agreed to the terms she now seeks to enforce. The evidence shows that during the 2013-2019 period of improvements, Ms. Webster was not observing the procedures required by the ByLaws. The Campbells apparently acquiesced to departure from the ByLaws. [1] However, the evidence does not show that the parties had the alternative agreement that Ms. Webster now seeks to enforce.

Because Plaintiff has not met the burden of proof, the Defendants are entitled to judgment.

Electronically signed pursuant to V.R.E.F. 9(d) on October 25, 2021 at 10:27 AM.

Mary Miles Teachout

Mary Miles Teachout
Superior Court Judge

[1] It is unfortunate that the ByLaws were apparently not observed. If they had been, this situation might not have developed While the ByLaws were not in evidence so the court does not know what the provisions are, most condominium ByLaws specify procedures for both dues and costs of improvements. Majority ownership does not nullify the requirements of the ByLaws.